

CITY OF HAYWARD

AGENDA REPORT

AGENDA DATE 01/12/99

AGENDA ITEM 7

WORK SESSION ITEM _____

TO: Mayor and City Council

FROM: City Manager

SUBJECT: Proposed Merger of AT&T Corporation and Tele-Communications, Inc.

RECOMMENDATION:

It is recommended that the City Council approve the attached resolution related to the proposed merger between, TCI Cablevision of Hayward, Inc., with AT&T Corporation.

BACKGROUND:

The cable franchisee in the City of Hayward, San Leandro Cable Television, Inc., which provides cable service through TCI Cablevision of Hayward, Inc., (jointly "TCI"), has announced its intention to merge with AT&T. The terms of the proposed merge provide that AT&T will then become the parent corporation of TCI, which will become a wholly owned subsidiary of AT&T.

The 1996 Telecommunications Act adopted by Congress and the implementing regulations adopted by the Federal Communications Commission (FCC) authorize local franchising authorities to approve transfers or sales of cable systems, if such approval is required by the local franchise agreement.

The City's Cable Franchise Ordinance specifies that the granting of a franchise is a privilege to be held for the public benefit and ownership cannot be sold, transferred or otherwise assigned without the express prior consent of the City.

Accordingly, TCI has asked the City to approve the proposed merger.

The FCC regulations require that action on TCI's request for the City's consideration of the merger, whether consent or denial must occur within a specified time period. In Hayward, the deadline for action on the request is January 15, 1999. If the City does not issue a decision by that time, the 1996 Telecommunications Act provides that the request for merger approval shall be deemed granted.

DISCUSSION:

In those cases where a cable system changes ownership, the FCC requires that certain information be provided to the franchising authority. Generally, this information is also intended for use by franchising authorities as part of their consent determination process. A copy of TCI's submission is on file in the Office of the City Clerk.

As the Cable Franchise/Regulatory Authority, the City of Hayward's sole responsibility in this process is to ensure that the new company has the financial, legal and technical knowledge to operate a cable system under the current franchise, which expires in the year 2008.

The City may withhold its consent, only if it can be proven that the new company does not have the financial, legal or technical knowledge to operate a cable system. In this case, AT&T has stated, in its submission to the City, that it will assume and carry out the franchise obligations of its new subsidiary.

Other local franchise authorities, including, the City of Fremont, County of Alameda, City of Union City, which are also affected by the merger were surveyed and staff found that while certain assurances may be requested, in no instance were jurisdictions planning to withhold consent to the merger.

Financial Impact

There are no adverse financial impacts to the General Fund. TCI Cablevision of Hayward, Inc., the local franchisee, must continue to forward quarterly Franchise Fee payments to the City, pursuant to the Franchise Agreement, in the amount of five percent of total gross revenues for its use of City Rights of Way.

Other Considerations

At a meeting held on December 8, 1998, facilitated by the City of Hayward, between Chabot Community College and TCI, City staff successfully negotiated the restoration of and increase in the broadcast hours, previously withdrawn by TCI, for Chabot College television's educational access Channel 15.

Further, it was agreed that control over the hours and use of educational access television, in this case Chabot College television Channel 15, in Hayward, falls under the scope and authority vested in the City of Hayward as the Franchise Authority.

As a follow-up to the initial meeting with Chabot, a joint meeting, initiated by the City Manager, will take place, early February, between the leadership of Chabot and the Hayward Unified School District. The purpose of the meeting is to explore ways in which the District, in partnership with Chabot, may avail itself of the television broadcast capabilities offered through Channel 15.

At a separate meeting with TCI, held on January 6, 1999, the City Manager discussed the possible introduction of the @Home® Internet service to City facilities. At this time TCI is unable to make a commitment to provide the service for the following reasons:

- 1) the absence of a corporate policy directing the provision of the service to governmental entities and/or franchise authorities; and
- 2) the fact that because @Home® is a separate legal entity, in which TCI has shared ownership, TCI's role is that of a facilitator in the provision of the service and not as the provider. They state therefore, that they lack the authority to extend the service, as a courtesy, for commercial purposes.

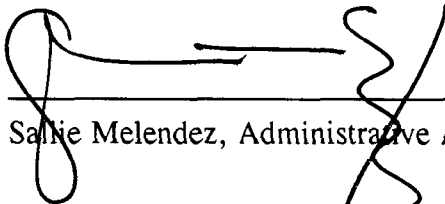
Should the @Home® service be offered for commercial application, it is the City's expectation that the service will be made available for use in its municipal facilities.

CONCLUSION:

With respect to the approval or denial of the merger proposal, the Council Technology Applications Committee met on January 5, 1999. At that time the members reviewed and discussed the proposed merger, understood the limits of the City's scope of authority, and adopted a unanimous motion to forward TCI's request to the full City Council for approval.

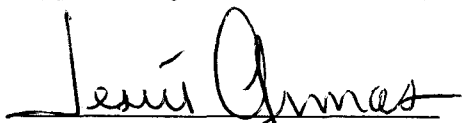
Therefore, based on the information submitted to the City, staff has determined that AT&T has adequate financial capabilities and the legal and technical knowledge to continue operation of the local cable system as provided under the current franchise.

Prepared by:



Sallie Melendez, Administrative Analyst II

Approved by:



Jesús Armas, City Manager

Attachment

DRAFT

pm 1-7-99

HAYWARD CITY COUNCIL

RESOLUTION NO. _____

Introduced by Council Member _____

RESOLUTION APPROVING THE PROPOSED MERGER
BETWEEN ATT AND THE CABLE COMMUNICATIONS
FRANCHISE HOLDER SAN LEANDRO CABLE TELEVISION
INC.

WHEREAS, San Leandro Cable Television Inc. d/b/a/ TCI Cablevision Hayward, Inc. ("Franchisee") is duly authorized to operate and maintain a cable communications system in Hayward, California ("the System") by City of Hayward ("Franchise Authority") pursuant to a franchise (the "Franchise") granted by the Franchise Authority; and

WHEREAS, pursuant to the Agreement and Plan of Restructuring and Merger among AT&T Corp. ("AT&T"), a newly formed wholly owned subsidiary of AT&T ("Merger Sub"), and Tele-Communications, Inc., the parent of Franchisee ("TCI), dated as of June 23, 1998 (the "Merger Agreement"), Merger Sub will acquire and merge with TCI, and as a result of the transactions contemplated by the Merger Agreement, TCI will become a wholly owned subsidiary of AT&T (the "Transactions"); and

WHEREAS, Franchisee will continue to hold the Franchise after consummation of the Transactions; and

WHEREAS, FCC Form 394 with respect to the Transactions has been filed with the Franchise Authority; and

WHEREAS, ATT and TCI have requested the Franchise Authority's consent to the Transactions.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The City Council hereby consents to and approves the Transactions to the extent that such consent is required by the terms of the Franchise and applicable law.
2. It is the City's expectation that the @Home© internet service will be made available to its municipal facilities.

3. This Resolution shall be deemed effective in accordance with applicable law.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 1999

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward